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**From:** [REDACTED]

**Sent:** Monday, March 09, 2015 15:19:27

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** FW: FYI - Alert issued for General Welfare Claims, POSTU-105138-15

[REDACTED],

The short answer is: In the case of taxpayers with unpaid assessments for years for which the Act deems the welfare payments non-taxable, the IRS may make an abatement. How far back the Act goes in deeming welfare benefits non-taxable is, I believe, a question for [REDACTED] or [REDACTED]. The decision whether to abate or not isn't reviewable in a pre-payment forum; accordingly, the taxpayer could not challenge at Appeals or in Tax Court a decision not to abate. Instead, the taxpayer would have to pay the tax and sue for a refund.

In a case where the IRS assessed following examination, the question isn't one of refunding but rather of abating some or all of the assessment. Although § 6404(b) prohibits taxpayers from filing claims for abatement of income tax assessments, taxpayers may make informal claims (e.g., in front of Appeals in a collection hearing, during the audit reconsideration process, or when ITG is processing refund claims under the Act); and pursuant to § 6404(a)(1), the IRS is authorized to abate the unpaid portion of any assessment which is excessive in amount. The timeframe for such abatements would appear to be as long as § 6511 does not bar a refund. So long as the taxpayer is not fully paid, whether she has made payments or not isn't important for the abatement question, but the amount of any payments will determine whether there is an overpayment; and if there is, then the usual refund rules will apply.

If this issue comes up in the context of a collection due process hearing and the IRS assessed after issuing a notice of deficiency that the taxpayer received or after the taxpayer had some other opportunity to challenge the assessment, then § 6330(c)(2)(B) precludes the taxpayer from raising a challenge to the existence or amount of the liability; i.e., the taxpayer no longer has a right to raise such a challenge. "In the Appeals officer's sole discretion, however, the Appeals Officer may consider the existence or amount of the underlying tax liability, or other such precluded issues, at the same time as the CDP hearing." § 301.6330-1(e)(4) Q&A A-E11. Such consideration is not properly part of the CDP Notice of Determination and will not be subject to judicial review. Id.

Please let me know if you have further questions.

Thank you,